

# **FINAL STATEMENT OF REASONS**

## **Overview/Non-Controlling Summary**

### **RULES OF PRACTICE**

#### **TITLE 18 - PUBLIC REVENUES REGULATIONS**

5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5087, 5090, 5091, and 5093

### **Specific Purpose**

The State Board of Equalization proposes to amend Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5090, 5091, and 5093 and repeal Regulation 5087 in Title 18, Division 2 of the California Code of Regulations. The proposed regulatory changes apply to the Board's Rules of Practice for following tax and fee programs administered by the Board:

Administration of Franchise and Income Tax Laws  
Revenue and Taxation Code Sections 18401-19802

Alcoholic Beverage Tax  
California Constitution Article XX, Section 22;  
Revenue and Taxation Code Sections 32001-34557

California Tire Fee  
Public Resources Code Sections 42860-42895;  
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee  
Health and Safety Code Section 105310;  
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax  
California Constitution Article XIII B;  
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax  
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge  
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge  
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax  
Revenue and Taxation Code Sections 43001-43651

Insurance Tax

California Constitution Article XIII, Section 28;  
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee  
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law  
Public Resources Code Sections 71200-71271;  
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Tax  
California Constitution Article XIX, Sections 1-9;  
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge  
Public Utilities Code Sections 890-900;  
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee  
Health and Safety Code Section 105190;  
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees  
Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax  
California Constitution Article XIII, Section 19;  
Revenue and Taxation Code Sections 11201-11702

Publicly Owned Property  
California Constitution Article XIII, Section 11(g);  
Revenue and Taxation Code Sections 1840 and 1841

Sales and Use Tax  
(including State-administered local sales, transactions, and use taxes)  
Revenue and Taxation Code Sections 6001-7279.6

Senior Citizens Homeowners and Renters Property Tax Assistance  
Revenue and Taxation Code Sections 20501-20646

State-Assessed Property  
California Constitution Article XIII, Section 19;  
Revenue and Taxation Code Sections 721-868, 4876-4880, 5011-5014

Timber Yield Tax  
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee  
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax  
Revenue and Taxation Code Sections 8601-9355

Welfare Exemption

## **Factual Basis**

In addition to the specific changes set forth below, authorities and references have been updated or corrected throughout the Rules of Practice.

### Regulations 5020, 5030, 5071 and 5090 -- Taxes Affected by This Article

These regulations are being amended to reflect statutory name changes to tax and fee programs and additions or corrections to statutory references.

### Regulation 5021 -- Petition for Redetermination

The second sentence of the regulation is being amended to eliminate the passive voice and the redundant phrase “or any person directly interested,” which is already included in the definition of the term “taxpayer” in Regulation 5070(j). The third sentence of the regulation is being deleted, eliminating the requirement that the taxpayer include the areas of agreement in the petition. This provision is not truly necessary and has not been enforced.

### Regulation 5022 -- Claims for Refund

The second sentence of this regulation is being amended to eliminate the passive voice and the redundant phrase “or any person directly interested,” which is already included in the definition of the term “taxpayer” in Regulation 5070(j).

### Regulation 5023 -- Appeals Conference

The regulation is being amended to reference the currently available option of videoconferencing for appeals conferences.

Subdivision (a) of the regulation is being amended to correct a punctuation error that appears in Barclays California Code of Regulations. Specifically, the colon after the word “oath” is being changed to a semi-colon.

Subdivision (b) is being amended to clarify that requests to reschedule or postpone appeals conferences are to be directed to the Board Proceedings Division. Subdivision (b) is also being amended to provide that a second rescheduling will be at the discretion of the Chief of Board Proceedings. The last sentence of (b)(1) is being amended to improve readability.

Subdivision (d) is being amended to change “Appeals Section” to “Appeals Division,” consistent with current Board organization.

Subdivision (f) is being amended to clarify that this subdivision addresses oral hearings before the Board.

#### Regulation 5070 -- Definitions

The term “and includes” is being deleted throughout this regulation because it is a redundant term.

Subdivisions (a), (d) and (f) are being revised to reflect organizational changes at the Board.

Subdivision (g) is being amended to cross-reference the definition of “party” in local tax reallocation or district tax redistribution appeals.

Subdivision (h) is being amended to change the name “petition for reconsideration” to “petition for rehearing” for consistency with Board terminology. Petition for review of local tax reallocation inquires and petition for review of district tax redistribution inquires are being added to the list of petitions.

Subdivision (j) is being amended to cross-reference the definition of taxpayer in local tax reallocation or district tax redistribution appeals.

#### Regulation 5075 -- Briefs Generally

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to provide guidance regarding the appropriate briefing schedule for certain types of appeals.

Subdivision (b) is being amended to clarify that it is the Board Proceedings Division, rather than the Chief, who will return the documents; to add “excluding Table of Contents and exhibits” from the page count, which reflects Board practice; to add a hyphen to “30 page,” and to eliminate the passive voice.

In subdivision (f), the word “submissions” is being amended to “brief” to avoid confusion with submission of evidence.

In subdivision (i), the word “briefing” is being capitalized for consistency.

#### Regulation 5075.1 -- FTB Briefing Schedule

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to clarify that it is the Board Proceedings Division who will notify the parties of the schedule and procedure for filing briefs.

Subdivisions (b)(1) and (c)(1) are being amended to require that two copies of the briefs be mailed to the Board Proceedings Division, who will then forward a copy to the Franchise Tax Board. This will ensure that the Franchise Tax Board receives a copy of all materials filed with the Board. The taxpayer will no longer be required to mail a copy of the material to the FTB.

Subdivision (b)(1) is also being amended to explain that in order to perfect the appeal the taxpayer must submit the information requested in the letter from the Board Proceedings Division and to specify that it is the Chief of Board Proceedings who may dismiss an incomplete appeal if it is not perfected within 90 days.

Subdivision (b)(2) is being amended to provide that the notification letter will come from the Board Proceedings Division rather than the Chief of Board Proceedings. Subdivision (b)(2) is also being amended to add the word “reply” in front of “brief” and to add a reference to new subdivision (b)(3).

New subdivision (b)(3) provides that for Senior Citizen Homeowner and Renters Property Tax Assistance appeals the Franchise Tax Board shall have 60 days, rather than 90 days, to file the reply brief.

Subdivision (d)(2) is being deleted because it serves no purpose since the taxpayer is not required to file a brief other than as provided in subdivision (b)(1). The “(1)” in front of the first paragraph is being deleted because it is no longer needed.

Subdivision (e) is being amended to eliminate the passive voice. The word “staff” is being capitalized for consistency.

#### Regulation 5076 -- Notice and Scheduling

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (c) is being amended for clarity and to specify that it is the Chief of Board Proceedings who may grant a continuance.

In subdivision (d), the word “for” is being replaced by “upon a showing of” for consistency.

Subdivision (e) is being amended to provide that the Chief of Board Proceedings may make an exception to the general rule for failure to respond to a hearing notice or to appear for hearing.

#### Regulation 5076.1 -- FTB Appeals Voluntary Dismissal, Negotiations and Deferrals

Subdivision (a) is being amended to specify that it is the Chief of Board Proceedings who has the authority to dismiss an appeal of an action of the Franchise Tax Board for the reasons stated. It is also being amended to eliminate the passive voice and to clarify that at any time prior to a final decision by the Board the taxpayer and the FTB may enter into settlement negotiations.

Subdivision (b) is being amended to specify that it is the Board Proceedings Division who may defer a hearing. Additionally, the word “for” is being replaced by “upon a showing of” for consistency.

#### Regulation 5079 -- Hearing Procedure

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to provide for the fact that more specific requirements exist in other regulations within the Rules of Practice.

Subdivision (c) is being amended to provide that the names and addresses of witnesses may be provided to the Board Proceedings Division rather than the Chief of Board Proceedings.

#### Regulation 5082.1 -- Petition for Rehearing – FTB

New subdivisions (d) provides that if a petition for rehearing is timely filed, but incomplete, the filing party shall be granted 30 days from the date of the acknowledgement letter to perfect the petition for rehearing. This revision is consistent with existing Board practice.

New subdivision (e) provides that the opposing party shall be given 30 days from the date of the acknowledging letter of a perfected appeal in which to file a reply brief. This revision is consistent with existing Board practice.

#### Regulation 5083 -- Fees and Removal of Board Records and Files

The first sentence of the regulation is being amended to eliminate the passive voice. The third sentence, which provides that records and files shall not be removed from the offices of the Board, is being deleted because it does not reflect current practice because there are Board employees who telework and therefore must remove records and files from the offices of the Board. The statutory reference in the last sentence is being updated.

#### Regulation 5087 -- Withdrawal of Exhibits

This regulation is being repealed because it is unnecessary under current Board practice, which does not require the submission of original documents into evidence.

#### Regulation 5091 -- Eligible Claims

Currently, the Board receives Taxpayers’ Bill of Rights claims from taxpayers who have not prevailed in their cases before the Board. Although such claims are denied, processing these claims requires staff time in the Legal Department and Board Proceedings Division. In order to provide further guidance to taxpayers regarding eligible claims, this regulation is being amended to specifically state that a taxpayer does not have an eligible claim if the Board did not grant the taxpayer’s petition or claim. Additionally, “Appeals Section” is being amended to “Appeals Division,” consistent with current Board organization.

The provision regarding the Franchise Tax Board’s Review and Write procedure is being deleted because it no longer exists.

#### Regulation 5093 -- Claim Procedure

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (b) is being amended to specify that failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

A new subdivision (c), addressing the dismissal of ineligible claims, is being added to authorize the Chief of Board Proceedings to dismiss a claim when the Board previously disposed of the case without granting the petition or claim.

Relettered subdivision (d) is being amended to specify that the 60-day period for submittal of a staff statement begins with the filing of a complete claim form. The word “Staff” after “Franchise Tax Board” is being amended to lower case.

### **Public Comments and Board Responses**

#### Regulation 5070(h)

In Regulation 5070(h), staff initially proposed amending “petition for reconsideration of successor liability” to “petition for rehearing of successor liability.” This amendment was proposed for consistency since the term “reconsideration” does not appear elsewhere in the Rules of Practice. However, in response to a comment received from the Board’s Petition, staff determined that in appeals involving successor liability the appropriate terminology is in fact “petition for reconsideration of success liability” because “reconsideration” rather than “rehearing” is the term used by the Revenue and Taxation Code. Therefore, the Board decided to retain the existing terminology.

#### Regulation 5075.1(b)(1)

Mr. Jeffrey M. Vesely of Pillsbury Winthrop LLP, in written public comment, expressed concern that the proposed amendment of Regulation 5075.1(b)(1) appears to change the current Board rule, which provides that “the taxpayer shall be granted 90 days from the date of the acknowledgement letter from the Board within which to perfect the appeal by filing a complete opening brief as required.” Board staff has explained to Mr. Vesely that the amendment of this regulation is in no way intended to limit the right of the taxpayer to file a complete opening brief after having filed an initial incomplete appeal. To the contrary, the Board encourages taxpayers to file complete briefs and intends to utilize the amended language to specifically encourage those taxpayers who are not currently providing the Board with sufficient information to do so in response to the Board’s request in the acknowledgement letter from the Board Proceeding Division. Mr. Vesely accepted the Board explanation regarding the nature of the amendment with the assurance that the intent of the proposed amendment would be permanently recorded in the final statement of reasons.

### **Local Mandate Determination**

The Board of Equalization has determined that the amended or repealed regulations do not impose a mandate on local agencies or school districts.

### **Small Business Impact**

The Board of Equalization has determined that the amended or repealed regulations will not have a significant adverse economic impact on small businesses.

**Adverse Economic Impact on Private Persons / Businesses Not Including Small Businesses**

No impact.

**Federal Regulations**

Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5087, 5090, 5091, and 5093 have no comparable federal regulations.

**Alternatives Considered**

By its motion, the Board of Equalization determined that no alternative to amending or repealing the regulations would be more effective in carrying out the purpose for which these actions were proposed or would be as effective and less burdensome to affected private persons than the proposed actions.